IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6903 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT KANTILAL JOSHI

Versus

EXECUTIVE ENGINEER PUBLIC HEALTH WORKS DIV.1

Appearance:

1. Special Civil Application No. 6903 of 2001

MR RD RAVAL for Petitioner No. 1

MR DG CHAUHAN for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 10/05/2005

C.A.V. JUDGEMENT

By filing this petition under Article 226 of the Constitution of India, the petitioner Chandrakant Kantilal Joshi has challenged the Judgement and Award dtd.24/4/2001 passed by the learned Labour Court,

Surendranagar in Reference (LCS) No.300 of 1990, whereby the Labour Court rejected the reference filed by the petitioner against his termination from service.

2. Mr.R.D. Raval, learned counsel for the petitioner has mainly argued that the petitioner was appointed as Work Charge Clerk-cum-Typist (Gujarati) by the respondent No.1 on probation for a period of two months in the pay scale of Rs.260-400 for the period from 1/3/1982 to 30/4/1982 and on completion of the probation the appointment of the petitioner was extended by the respondent No.1 from 1/5/1982 to 31/8/1982, but before completion of the said period, he was relieved from service by the respondent No.2 vide order dtd.30/6/1982 from immediate effect. Against the said termination, the petitioner preferred Reference No.300 of 1990 before the Labour court, Surendranagar but the respondents did not remain present before the Labour Court and ultimately, the Labour court passed ex-parte Award dtd.26/5/1992 directing the respondents to reinstate the petitioner with continuity of service and also with full back wages. Pursuant to the said Award, the petitioner reported for duty on 1/7/1992 before the respondents and requested to comply with the directions of the Labour Court but the petitioner was not taken on duty. Thereafter, the respondents filed Misc.Application No.18 of 1992 for quashing and setting aside the ex-parte award dtd.2/5/1992 passed in Reference No.300 of 1990, but the said application was rejected by the Labour Court vide order dtd.29/7/1992. As the respondents did not comply with the Award of the Labour Court and did not reinstate the petitioner, the petitioner filed Recovery Application No.705 of 1992 and the Labour Court passed order dtd.12/8/1993 and issued Recovery Certificate of Rs.1,68,563.45 ps. The petitioner approached this Court by filing Special Civil Application No.3600 of 1994 and prayed to direct the respondents to reinstate the petitioner in compliance with the Award dtd.26/5/1992 and recovery Certificate dtd.14/9/1993. The respondents also filed Special Civil Application No.5426 of 1994 for quashing and setting aside ex-parte Award dtd.26/5/1992 and order dtd.17/8/1992 passed in Recovery Application. This Court heard both the petitions together and allowed Special Civil Application No.5426 of 1994 filed by the respondents and dismissed Special Civil Application No.3600 of 1994 filed by the petitioner, vide common judgement and order dtd.7/4/2000 directing the Labour Court to decide the Reference (LCS) No.300 within a period of nine months and also directed to the respondents to reinstate the petitioner on his original post and pay salary in the pay scale to which the

petitioner was entitled, till final disposals of the reference. The Labour Court rejected the reference without considering the evidence produced before him and the contentions raised on behalf of the petitioner.

3. Mr.RD Raval, learned counsel for the petitioner has mainly argued that the petitioner was appointed through the regular procedure for regular appointment prescribed under the rules; he was appointed through Employment Exchange in regular pay scale, he was sent for medical examination and the conditions like passing of departmental examination etc.have been mentioned in the appointment order; that he is qualified person; that as per the recruitment rules, work charge employees is required to be appointed on probation for one year, but the respondent No.1 had appointed the petitioner on probation for two months, and hence the action of the respondents is violative of the rules; that the respondent had passed order extending the appointment of the petitioner from 1/5/1982 to 31/8/1882, but the service of the petitioner has been terminated before completion of the said period on 30/6/1982 with a view to deprive the petitioner from completing 240 days; that during the pendency of the reference, the respondent appointed about 10 persons without calling the petitioner; that from the appointment order it is clear that the appointment of the petitioner was regular appointment not for temporary period or for specific work; the appointment was on regular post through employment exchange in regular pay scale; that the juniors to the petitioner were continued in service and after discharge of the petitioner, the respondent No.1 has appointed other work charge clerks, which is illegal and arbitrary; the respondent did not remain present before the labour court and did not comply with the award passed by the Labour Court and order for recovery certificate, and hence the petitioner has to approach this Court by filing Special Civil Application No.3600 of 1994; that the petitioner is suffering on account of illegal action on the part of the respondents since last about 22 years; the respondents are delaying the proceedings at the cost of public exchequer; that initially the respondents had appointed other employees on daily wage basis and thereafter they have been regularized as work charge clerks, without calling the petitioner; that the appointment and extension order have bee passed by the respondent No.1 whereas the termination order has been passed by the respondent No.2 who is below the rank of respondent No.1 appointing authority; that the respondents have terminated the service of the petitioner without considering his seniority and

retaining juniors to the petitioner in service; that at the time when the petitioner was working, his work was never questioned and when the petitioner has completed probation period, it is the duty of the respondents to make the petitioner permanent; in the case where the probation period is stipulated and once the employee completes the prescribed period of probation, the question of completing 240 days does not arise; that there is violation of Sections 25(F), 25(G) and 25(H) of the Industrial Disputes Act; that the impugned Award is against the evidence on record and settled law. Consequently, it is prayed to quash and set aside the impugned Award. He has also placed reliance on the following decisions;

[1] A.I.R. 1986 1571
[2] A.I.R. 2001 SCW 2685 and
[3] A.I.R. 2000 SCW 835.

4. On the other-hand, Mr.D.G. Chauhan, learned counsel for the respondents has strongly opposed inter-ala contending that in 1980-81, the respondent Board had undertaken the water supply and sewerage scheme at Surendranagar and for the said scheme/project, the respondent Board had appointed some daily rated labourers including the petitioner for a temporary period; that the appointment of the petitioner was purely temporary and ad-hoc; that his services can be terminated at any time without notice, that his appointment and expenses was on the project; that as there was no work, the service of the petitioner was terminated in terms of the appointment order; that the services of the petitioner was terminated on 30/6/1982 and he raised industrial dispute in 1990 i.e. after a delay of 8 years; that the petitioner has worked for 180 days only and has not completed 240 days; that the provisions of Sections 25(F), 25(G) and 25(H) have no application; that the petition under Article 227 is not maintainable as the Labour Court has not committed any error apparent on the face of the record much less any error of law; that the project on which the petitioner was working is closed and hence, no reinstatement can be granted. Consequently, he has prayed to dismiss the petition. He has placed reliance on the following decisions

[1] 2003 (3) SCC 524
[2] 1997 (11) SCC 521
[3] 2003 (9) SCC 592
[4] 2001 (5) SCC 540
[5] 2002 (1) LLJ 457
[6] AIR 1997 SC 3657
[7] AIR 1996 SC 1665 and
[8] 2004 (3) GLR 1841.

5. Having heard the learned counsel for the respective parties and considering the material on record and relevant case law, it is clear that initially the petitioner was appointed for a period of two months from 1/3/1982 to 30/4/1982 and thereafter, the appointment of the petitioner was extended by the respondent NO.1 from 1/5/1982 to 31/8/1982. But prior to completion of the said period, the service of the petitioner was terminated from 30/6/1982. Thus, it is clear that the petitioner was appointed on temporary and ad-hoc basis and as there was no work, his service was terminated. It is true that the petitioner was appointed through Employment Exchange, but merely because he was engaged through Employment Exchange for temporary work for specific period, he cannot claim right to continue on the post because for the appointment of the petitioner, specific order for two months was passed by the respondent and said appointment was extended as aforesaid, but when there is no work, the question of continuation does not arise. When the petitioner was appointed for temporary period, the provisions of sec.25(F) of the Industrial Disputes Act, 1947 is not applicable and the respondent has no right to the post and his disentitlement is not arbitrary, as held by the Hon'ble Supreme Court in the case of Himanshu Kumar Vidyarthi and others Vs. State of Bihar and others, reported in AIR 1997 SC 3657 and as by the Hon'ble Supreme Court in the case of State of Himachal Pradesh Vs. Suresh Kumar Verma and another, reported in AIR 1996 SC 1565. Furthermore, in view of the guidelines issued by the Larger Bench of this Court in the case of Amreli Municipality Vs. Gujarat Pradesh Municipal Employees Union, reported in 2004 (3) GLR 1841, more particularly in para 2.1.13, the petitioner has no right to the post.

6. In view of the above facts and circumstances of the case, considering the judgements relied on by the learned counsel for the respective parties and ratio laid down in the aforesaid judgements, I am of the opinion that the Labour Court has not erred in rejecting the reference while passing the impugned Award. The impugned Award is, therefore, just, legal and proper. The petition is, therefore, required to be dismissed and is accordingly dismissed. Rule is discharged. No order as to costs.

(S.D. DAVE,J.)

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